IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7054 OF 2005

Dr. (Smt.) Pushpalata Ramesh Naphade ... Petitioner

V/s

The State of Maharashtra & ors. ... Respondents

Mr. A.S. Deshpande for the petitioner.

Mr. S.R. Nargolkar, A.G.P. for Resp.Nos. 1 & 2.

Mr. V.Z. Kankaria for the Respondent No.3.

CORAM: V.G. PALSHIKAR,Ag.C.J. & D.B. BHOSALE, J.

DATED: 18TH NOV., 2005

P.C.:

1. By this petition, the petitioner has challenged the order passed by the Maharashtra Administrative Tribunal on 1.7.2004.

2. The petition is filed on 29.9.2005 i.e. after a period of 14 months. Explaining the delay, it is contended on behalf of the petitioner that, petitioner was not served with the notice of the original application taken out by the present respondent No.3. Reliance was placed on the document Exh."C" at page 34

to show that it was not a proper notice. Exh."C" page 34 is a notice issued by the advocate of the petitioner in the original application pointing out to the present petitioner that the matter is placed before the M.A.T. on 22.4.2004. It called upon the present petitioner to remain present if the petitioner so desire. It is obvious from the record that the petitioner did not desire to remain present in the proceeding before the M.A.T. as will be seen from the observations from the Tribunal made in para 13 thereof that,

> "We find that no private respondent has participated in the proceedings of this O.A. in spite of being served."

The present petitioner was thus grossly negligent about his defence and the proceeding which took place before the M.A.T. By deliberately remaining silent and without participating in the proceeding, the petitioner awaited the outcome of the application. Having noted the failure of the petitioner in that application, took no steps for 14 months. Specific averment is made in the petition that the petitioner had not instructed the government or the government advocate to file the review petition and yet the petitioner chose to remain silent

till the review petition is decided. This conduct on the part of the petitioner speaks of calculated negligence of a person who decides or choose to await for the outcome of the particular event. Apart from the unexplained latches of 14 months, what was impugned before the Tribunal was the discretionary appointment. The Tribunal has declined to interfere with the order and has observed that posting of respondent No.3 in the present petition could have been made and accordingly it was ordered. The Tribunal has considered the merits of the case in para 14 of its order where it is observed that,

> "There is no dispute that the applicant is senior to respondent No.5(a) and in no way it cannot be said that he did not make the benchmark on the basis of C.R."

The present petitioner did not therefore dispute the seniority of the present respondent No.3 before the Tribunal. It is, therefore, not open for the petitioner now to contend that the Tribunal has erred in holding that the respondent No.3 in the present petition was senior to the petitioner. The Tribunal has thus decided the original application on merits. The appointments

are ad-hoc. In such circumstances, we do not feel it necessary to interfere with the order of the Tribunal, particularly when the petitioner was unwilling to participate in the proceeding right from the inception. In view of this matter, the petition is rejected.

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(V.G. Palshikar, Ag.C.J.)

(D.B. Bhosale, J.)